

9.5.2006

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

IN RE:	:	
	:	
CHRIS WAYNE BLACKWELL and	:	
TONYA RUTH BLACKWELL,	:	Case No. 04-41655
	:	
Debtors.	:	Chapter 13 – Judge Bonapfel
	:	

**ORDER TO JAMES T. FORDHAM AND TO LAW OFFICES OF  
MATTHEW T. BERRY TO SHOW CAUSE WHY FEES SHOULD  
NOT BE DISGORGED AND WHY SANCTIONS SHOULD NOT  
BE IMPOSED AND NOTICE OF HEARINGS CONCERNING  
SHOW CAUSE ORDER, SETTLEMENT AND FEES**

On July 6, 2006, the Court entered an Order that (1) vacated its “Order for Approval of Compromise and Disbursal of Proceeds,” entered on May 2, 2006; (2) scheduled a hearing for August 23, 2006, on the Debtors’ renewed “Motion for Approval of Compromise and Disbursal of Proceeds” and on the request of James T. Fordham for allowance of compensation as special counsel for the Debtors in wrongful death litigation; (3) ordered Mr. Fordham and the law firm of Matthew T. Berry to show cause at the hearing why fees should not be disgorged and why sanctions should not be imposed; and (4) ordered the Debtors to file an accounting with regard to proceeds received from the settlement of the wrongful death action and to show cause, at the hearing, why sanctions should not be imposed on them.

The Debtors, Timothy Paschall of the Berry law firm, and the Chapter 13 Trustee appeared at the hearing. Mr. Fordham did not. Mr. Paschall explained that his office had not received notice of the hearing, and the record does not show that the Clerk served Mr. Fordham with the July 6 Order as directed. Because of concerns about whether due and proper notice of

the hearing had been provided to the Berry firm and Mr. Fordham, the Court determined that the hearing should be rescheduled and that new notice with regard to approval of the settlement, allowance of compensation to Mr. Fordham, disbursement of proceeds of the settlement, disgorgement of fees, and sanctions against Mr. Fordham and the Berry firm be provided to Mr. Fordham and the Berry firm, as set forth below.

Although the Debtors had not filed an accounting as directed by the Order, their counsel provided a summary of the disbursements and committed to the prompt filing of a written accounting with the Court. The Court determined that, absent further action by the Trustee after the filing of the accounting, the issues in the Order with regard to the Debtors would be deemed resolved.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED, AND NOTICE IS HEREBY GIVEN**, as follows:

(1) A hearing will be held at **11:00 o'clock a.m. on October 4, 2006**, in Courtroom 326, United States Courthouse, 600 East First Street, Rome, Georgia, with regard to the issues addressed in the July 6 Order (other than the Debtors' accounting and Order to the Debtors to show cause), a copy of which is attached hereto. Specifically, the Court at the hearing will consider whether to approve the settlement, to allow compensation to Mr. Fordham, and to approve the proposed disbursement of proceeds, and the issues relating thereto as raised and discussed in the July 6 Order;

(2) **Mr. Fordham shall appear at the hearing** and show cause as to (a) why he should not be ordered to return any portion of the settlement proceeds he has received in excess of the amounts that the Court permits to be disbursed to him; (b) why his fees should not be reduced;

and (c) why sanctions should not otherwise be imposed, on account of the facts set forth in the July 6 Order; and

(3) **The Law Offices of Matthew T. Berry** shall appear at the hearing and show cause as to why its fees should not be reduced, and why sanctions should not otherwise be imposed, on account of the facts set forth in the July 6 Order.

The Debtors may, but are not required to, attend and participate in the hearing.

The Clerk is directed to mail copies of this Order to the Debtors, the Law Offices of Matthew T. Berry, Mr. James T. Fordham, the chapter 13 Trustee, the United States Trustee, and all other parties in interest, including those persons shown below.

IT IS SO ORDERED this 5<sup>th</sup> day of September, 2006.

  
PAUL W. BONAPFEL  
UNITED STATES BANKRUPTCY JUDGE

Copies to:

Timothy H. Paschall  
Law Office of Matthew T. Berry  
2751 Buford Highway, Suite 400  
Atlanta, GA 30324

James T. Fordham  
P.O. Box 1105  
411 West Crawford Street  
Dalton, GA 30722-1105

Susan H. Shiptenko  
Law Office of Matthew T. Berry  
2751 Buford Highway, Suite 400  
Atlanta, GA 30324

Chris W. Blackwell  
3917 Shelton Drive  
Resaca, GA 30735

Mary Ida Townson  
Chapter 13 Trustee  
100 Peachtree Street NW Suite 2700  
Atlanta, GA 30303

Tonya R. Blackwell  
3917 Shelton Drive  
Resaca, GA 30735

United States Trustee  
Third Floor Russell Building  
75 Spring Street S.W.  
Atlanta, GA 30303

All parties in interest

I hereby certify that I have served this order on the above referenced parties specified with addresses, via first class mail. In Rome, Georgia, this 5th day of September, 2006.

  
Connie A. Mason, Relief Courtroom Deputy

7-6-2006

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

IN RE:	:	
	:	Case No. 04-41655
CHRIS WAYNE BLACKWELL and	:	
TONYA RUTH BLACKWELL,	:	Chapter 13 – Judge Bonapfel
	:	
Debtors.	:	

**ORDER VACATING “ORDER FOR APPROVAL OF COMPROMISE AND DISBURSAL OF PROCEEDS” ENTERED ON MAY 2, 2006 [33];**

**ORDER AND NOTICE OF HEARING ON DEBTORS’  
RENEWED “MOTION FOR APPROVAL OF COMPROMISE  
AND DISBURSAL OF PROCEEDS” [42] AND ON REQUEST FOR  
ALLOWANCE OF COMPENSATION OF JAMES T. FORDHAM;**

**ORDER TO JAMES T. FORDHAM AND TO LAW OFFICES OF  
MATTHEW T. BERRY TO SHOW CAUSE WHY FEES SHOULD  
NOT BE DISGORGED AND WHY SANCTIONS SHOULD  
NOT BE IMPOSED AND NOTICE OF HEARING THEREON; and**

**ORDER TO DEBTORS TO PROVIDE ACCOUNTING AND  
TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED  
AND NOTICE OF HEARING THEREON.**

On January 27, 2006, the law offices of Matthew T. Berry filed an application for approval of James. T. Fordham as special counsel to represent the Debtors in a wrongful death lawsuit. [24]. The application stated that the Debtors had “formally retained” Mr. Fordham to pursue the claim on or about September 15, 2005. Attached was a copy of the agreement between Tonya Blackwell and Mr. Fordham providing for the payment of a contingent fee of one-third of any recovery and actual and ordinary expenses incurred. Also attached was Mr. Fordham’s affidavit, dated January 24, 2006, which represents that he has no connections with

parties in interest in the case and that he is a "disinterested person" as contemplated by 11 U.S.C. § 101(13).

On the same day, the Debtors filed a motion for approval of a compromise and settlement and the disbursement of proceeds. [25]. The settlement motion requested approval of a settlement of the claim for \$50,000, payment of a contingent fee to Mr. Fordham of \$16,666.66, and disbursement of the balance of \$33,333.34 to the Chapter 13 Trustee to pay claims of creditors in full.

Counsel for the Debtors provided notice of the proposed settlement and of a hearing thereon. In the absence of objections by the Trustee or any other party in interest, the Court entered Orders on May 2, 2006 approving the employment of Mr. Fordham [32] and the proposed settlement and disbursement of proceeds as requested. [33].

The Chapter 13 Trustee discovered that, contrary to the representations in the application to employ Mr. Fordham and the motion to settle the claim and disburse the proceeds, the claim actually had been settled in November 2005, Mr. Fordham had already been paid, and the Debtors' settlement proceeds of \$33,333.34 had been disbursed directly to them. Because the Trustee did not receive the Debtors' share of the settlement proceeds as contemplated by the motion and the Order, she filed, on May 16, 2006, a motion to vacate the Order approving the compromise and disbursement of proceeds. [38]. Alternatively, the motion sought dismissal of the case or conversion to chapter 7.

A hearing was held, after notice, on June 21, 2006, at which the Debtors, their counsel in this case, and the Trustee, but not Mr. Fordham, appeared. Counsel for the Debtors reported that the Debtors had spent all but \$10,000 of the settlement proceeds, which would be turned

over to the Trustee. Debtors' counsel requested that the Debtors be permitted to continue making payments to the chapter 13 Trustee to complete payments under their plan that provides for payment of creditors in full.

The Court determined that the Order approving the settlement should be vacated because the motion for its approval misrepresented the facts and because the settlement proceeds had not been, and could not be, disbursed as it provides. The Court directed counsel for the Debtors to file a motion for approval of the compromise and disbursement of funds that would properly represent the facts. On June 28, 2006, the Debtors filed their motion. [42]. It seeks approval of the settlement and disbursement of proceeds as follows: \$16,666.66 to Mr. Fordham, \$23,333.34 to the Debtors, and \$10,000 to the Chapter 13 Trustee. Although the motion in effect seeks ratification of what has already occurred, it does not state that the settlement was actually consummated or that Mr. Fordham and the Debtors have already received payments as proposed.

The facts as set forth above demonstrate that there have been serious misrepresentations of fact to the Court, the Trustee, and other parties in interest in this case. A settlement of a claim of the estate has taken place, attorney's fees have been paid, and estate funds have been disbursed to and used by the Debtors, all without court approval that the Federal Rules of Bankruptcy Procedure require. FED. R. BANKR. P. 2016, 9019.

Having determined that the settlement order must be vacated for these reasons, the Court must consider appropriate remedial measures if it decides at the hearing that the settlement as proposed is in the best interests of the Debtors, creditors, and the estate. Because the vacating of the settlement order means that the Court has neither allowed nor approved the payment of Mr. Fordham's fee, an appropriate remedy might include disallowance of Mr. Fordham's fees

in whole or in part and the deferral of payment of any allowed fees until all creditors in the case have been paid. Moreover, it may be appropriate to reduce the fees of Mr. Fordham and the Debtors' chapter 13 counsel, or otherwise sanction them, to compensate the chapter 13 trustee for the additional time and expense that her office has had to devote to this matter because of the misrepresentations. Finally, it may be appropriate to impose sanctions against the Debtors. Because the Debtors appear to desire to complete their payments under the plan and pay all creditors in full, however, dismissal of the case or its conversion to chapter 13 is not in the best interests of creditors or the estate.

Based on, and in accordance with the foregoing, it is hereby **ORDERED AND ADJUDGED, AND NOTICE IS HEREBY GIVEN**, as follows:

1. The "Order for Approval of Compromise and Settlement and Disbursal of Proceeds" entered on May 2, 2006, is hereby **VACATED** in its entirety.

2. A hearing will be held at 10 o'clock a.m. on the 23d day of August, 2006, in Courtroom 326, United States Courthouse, 600 East First Street, Rome, Georgia, with regard to the following matters:

- (a) The Debtors' motion for approval of the settlement of the Debtors' claim for \$50,000;
  - (b) The request for allowance of Mr. Fordham's contingent fee in the amount of \$16,666.66; and
  - (c) The proposed disbursement of the settlement proceeds as follows: (1) \$16,666.66 to Mr. Fordham; (2) \$23,333.34 to the Debtors; and (3) \$10,000 to the Trustee.
3. Mr. Fordham shall appear at the hearing and show cause as to the following:

- (a) Why he should not be ordered to return any portion of the settlement proceeds he has received in excess of the amounts that the Court permits to be disbursed to him; and
- (b) Why his fees should not be reduced, and why sanctions should not otherwise be imposed, on account of the facts set forth above.

4. The Law Offices of Matthew T. Berry shall appear at the hearing and show cause as to why its fees should not be reduced, and why sanctions should not otherwise be imposed, on account of the facts set forth above.

5. The Debtors shall appear at the hearing and show cause as to why sanctions should not be imposed on account of the facts set forth above.

6. The Debtors shall file an accounting of the \$23,333.34 disbursed to them, no later than August 9, 2006, and serve same on the Chapter 13 Trustee.

The Clerk is directed to mail copies of this Order to the Debtors, the Law Offices of Matthew T. Berry, Mr. James T. Fordham, the chapter 13 Trustee, the United States Trustee, and all other parties in interest.

IT IS SO ORDERED this 6<sup>th</sup> day of July, 2006.

  
PAUL W. BONAPFEL  
UNITED STATES BANKRUPTCY JUDGE



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All parties in interest